

COURT OF THE STATE OF NEW YORK
NEW YORK : CIVIL TERM 27

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LTD.,

Plaintiff,

INDEX NUMBER:
113339/01

against -

VANDERBILT TRADEMARK, B.V.,
VANDERBILT APPAREL, INC.,
TRADEMARK INVESTMENT, LTD.,

Defendants.

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60 Centre Street
New York, New York
May 3, 2002

HONORABLE IRA GAMMERMAN, Justice.

APPEARANCES:

CHADBOURNE & PARK, LLP,
Attorneys for the Plaintiff
30 Rockefeller Plaza
New York, New York 10112
BY: THOMAS J. HALL, ESQ.
MELISSA LAROCCA, ESQ.

SHIBOLETH, YISRAELI, ROBERTS & ZISMAN, L.L.P.
Attorneys for Defendant Gloria Vanderbilt Trademark B.V.
350 Fifth Avenue, Suite 6001
New York, New York 10118-6098
BY: MATTHEW C. GRUSKIN, ESQ.

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APPEARANCES: (Continued)

DUANE MORRIS LLP
Attorneys for the Defendant GV APPAREL
& GV TRADEMARK INVESTMENT, LTD.
380 Lexington Avenue
New York, New York 10168

BY: KAREN S. FRIEMAN, ESQ.

MARGARET BAUMANN
Official Court Reporter

1
2 ISAAC DUBAH, called as a witness,
3 having been previously duly sworn, was examined and
4 testified as follows:
5 THE COURT: Let the record reflect Isaac Dubah
6 is recalled.
7 THE COURT: Go ahead, counsel.
8 DIRECT EXAMINATION
9 BY MS. FRIEMAN:
10 Q Good morning, Mr. Dubah.
11 Were you involved in negotiating the license
12 agreement between Hudson Bay Company and Gloria Vanderbilt
13 Trademark, B.V.?
14 A Yes.
15 Q Could you tell us what your involvement was?
16 A As CEO of Gloria Vanderbilt, I was not involved in
17 the detail, nor was I involved in negotiating directly with
18 the Hudson Bay. In my role as chief executive, I certainly
19 was involved.
20 Q Were you involved in direct conversation with anyone
21 at Hudson Bay regarding the terms of the license agreement
22 with Gloria Vanderbilt Trademark, B.V.?
23 A I was involved in certain meetings with them, again I
24 -- before the license was signed, yes.
25 Q Do you recall the substance of any of those

1 conversations?
2 A The basic substance was really discussion relating to
3 the value of the trademark, positioning of the trademark, how
4 we could -- how the trademark will do in the stores.
5 Basically, it's talking about talking up the trademark and
6 how we can be able to get, you know, more royalties from
7 them.
8 Q And did you have any discussions with anyone at
9 Gloria Vanderbilt Trademark, B.V. about the license agreement
10 with Hudson Bay prior to the time that that agreement was
11 executed?
12 A Yes.
13 Q And could you tell us who, who did you speak with
14 about that at Gloria Vanderbilt Trademark, B.V.?
15 A Again, it was years ago, so I don't recall the
16 specifics of the discussion, but I would have discussed it
17 with Henk Keilman who is basically -- you know, owns and
18 manages GVBV.
19 Q And did he agree to the terms of the license
20 agreement between Hudson Bay Company and Gloria Vanderbilt,
21 B.V.?
22 A He was ecstatic of the minimums and royalty we were
23 anticipating in getting since, prior we were trying to do
24 business in Canada for many years, we were never able to get
25 such a big license. So, such big minimums out of a Canadian

1 is more, Judge, than just an argument based on --
 2 THE COURT: I would say, counselor, that's what
 3 you have to concentrate on in your post trial argument
 4 because you really have to change my mind.
 5 My initial impression here is that this is a
 6 scheme cleverly thought of, and unfortunate from the
 7 defendants' point of view, discovered by the plaintiff,
 8 perhaps, quite accidentally, to deny to the plaintiff a
 9 royalty or a portion of the royalty to which it is
 10 entitled, and you are going to have a problem convincing
 11 me of the opposite.
 12 But, let's talk about some practical matters.
 13 MR. GRUSKIN: Your Honor, just one --
 14 THE COURT: Yes.
 15 MR. GRUSKIN: On what you just said, the issue
 16 that you'd like us to focus in on is whether the
 17 definition of buyer includes?
 18 THE COURT: Whether or not it was the intention
 19 of the parties that merely by assigning, from merely by
 20 assigning to BV, the defendants can avoid the impact of
 21 this language.
 22 MS. FRIEMAN: But, your Honor.
 23 THE COURT: That's really your argument.
 24 MR. GRUSKIN: But even if that was irrelevant,
 25 even if the transfer was conceded by everyone to be an

1 appropriate proper legal arm's length transaction, the
 2 Court is still viewing GTI as a buyer, am I correct?
 3 THE COURT: It has nothing to do with the bona
 4 fides of the transfer.
 5 MR. GRUSKIN: That's what I mean.
 6 THE COURT: Because it seems to me that the
 7 intention of the parties was to prevent what is happening
 8 here from happening, and that the mere transfer of the
 9 copyright or the trademark from one company to another,
 10 even if it's a legitimate transfer, and even if the Dubah
 11 family has no interest at all in the Dutch company -- and
 12 I am interested in the fact -- I guess the principal
 13 operating officer of the Dutch company never appeared for
 14 his deposition? If you had made a motion, I would have
 15 made a judgment against that. Just a moment.
 16 If you had made a motion based on that failure I
 17 would have granted that motion and judgment against the
 18 company.
 19 MR. GRUSKIN: Your Honor.
 20 THE COURT: Just a minute.
 21 MR. HALL: Your Honor, I did send a letter,
 22 third week of April, asking for that relief.
 23 MR. GRUSKIN: And, we had a conference with Ms.
 24 Giles of your chambers, and we dealt with that.
 25 THE COURT: In any event, in any event, it does

1 -- let me say this to you, it does raise some questions
 2 in my mind, but that's not the basis of my ruling or my
 3 thoughts. I have not ruled yet.
 4 It seems to me that that transfer doesn't change
 5 anything, and that everyone on this list is the buyer, and
 6 that the transferor remains liable for the payments and
 7 remains liable under the definition of buyer, and you will
 8 have to argue otherwise in the papers you submit.
 9 MR. GRUSKIN: I am trying to understand. If the
 10 service provider, instead of being GVAC, Mr. Gordon's
 11 could have, the plaintiff's expert in this case --
 12 THE COURT: I think you would be in much better
 13 shape.
 14 MR. GRUSKIN: Okay, because your finding.
 15 THE COURT: Absolutely.
 16 MR. GRUSKIN: Okay, I want to be clear on that.
 17 THE COURT: There is no question about that. I
 18 don't think we'd have a lawsuit under those
 19 circumstances.
 20 And if it was clear that the only amount that
 21 was being received was the amount of the mark and that
 22 there was a totally independent third-party unrelated to
 23 any of the Dubah corporations, including the providing the
 24 services, we would not be trying this case.
 25 There is nothing in that agreement, in the '98

1 agreement that prevents that from happening, and I suspect
 2 that did not happen because some decision was made to
 3 convert two and a half percent to 1 and a quarter
 4 percent.
 5 Now, from a practical point of view, is there a
 6 dispute concerning the amount of royalties that have been
 7 paid about a contingent payments that your client has
 8 received?
 9 This is the addressed to the attorney for the
 10 plaintiff.
 11 MR. HALL: We know what has been reported to us
 12 by GVAC.
 13 THE COURT: How do you verify the contingent
 14 payments, the amount that to which your client is
 15 entitled?
 16 MR. HALL: We are trying to get that information
 17 from Zellers directly.
 18 THE COURT: It seems to me you don't need to
 19 know what Zellers paid. To -- presume I don't think
 20 there's any question that that Zellers paid the same
 21 amount that they made on the one quarter percent to BI to
 22 GVAC.
 23 MR. HALL: We're trying to find out from Zellers
 24 how much they paid.
 25 Well, to both, it is a quarterly payment.